

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NORTH DAKOTA**

In re:

Drain Services, Inc.

Bankr. No. 23-30352

Debtor

Chapter 11

**ACTING US TRUSTEE OBJECTIONS TO
DRAIN SERVICES, INC. AMENDED SUBCHAPTER V PLAN**

The Acting United States Trustee (UST) objects to Drain Services, Inc.'s Amended Subchapter V Plan of Reorganization (Plan") (Doc. No. 108) In support of her objections, she states the following:

1. The UST has standing to object under 28 U.S.C. § 586 and 11 U.S.C. § 307. The UST submitted these comments to Debtor's counsel on January 16, 2024.
2. The UST joins in the Subchapter V Trustee's objection over his outstanding fees. Section 1129(a)(9)(A) requires the fees (as a Section 507(a)(2) administrative expense) to be paid in full by the effective date of the Plan. The Subchapter V Trustee has not received a retainer in the case and the first interim application was approved by the Court on December 11, 2023. See Doc. 98. The Debtor must demonstrate that it will have sufficient funds on hand to make the payment on the effective date if it is not current at confirmation.
3. The Amended Plan does not include an adequate explanation of the confirmation process under Section 1191(a) versus (b). (See UST Objection Doc. 97). For voting purposes, the Plan has been served, but the lack of a description is problematic for interpreting the Plan in the future. The UST's next two objections relate to the issues that could arise.

4. For the reporting at Section 8.07, the submission of the bank statements, while necessary, is not adequate to meet the UST's objection at paragraph 10 of document 97. Specifically, Section 8.09 (or such other section) should include a statement that the insiders will not use any business funds for personal use; Section 8.07 should provide for monthly reporting (or such other reasonable period) of income, expenses and itemized plan payments; and *if the Plan is non-consensual*, Section 8.07 (or such other section) should provide for the Subchapter V trustee to monitor the Debtor's compliance with the Plan and report to the Court on the progress of the Debtor in making payments under the Plan. (See UST Objection Doc. 97, para. 10).

5. The Amended Plan should clearly define when the Subchapter V trustee services will be terminated. If the Plan is confirmed consensually, the Plan should make clear that Subchapter V Trustee services will terminate upon substantial consummation and the filing of his final report pursuant to Section 1183(b)(1). If the Plan is not confirmed consensually, the Plan should provide for the Subchapter V Trustee to submit his final report upon the completion of all plan payments under Section 1183(b)(1) (presently estimated in January of 2029). The distinction is important for creditors to know whether the Subchapter V Trustee is monitoring plan payments and is important to define the Subchapter V Trustee's duties in a non-consensual Plan.

6. Under the Trust document or Amended Plan, it is not clear how unsecured creditors can enforce the Trust if the payments are not made. The Trust agreement needs some remedy provision, given that the trustee of the trust, as an insider of the Debtor, is not likely to enforce the Trust if the payments required by the Trust are not made.

7. The UST does not anticipate submitting any exhibits or calling any witnesses in connection with the hearing on confirmation.

WHEREFORE, the UST requests that the Court grant her objections herein and such other relief as appropriate.

Dated: January 23, 2024

MARY R. JENSEN
Acting U.S. Trustee Region 12

/s/ Sarah J. Wencil
Sarah J. Wencil
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UNSWORN CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury that on January 23, 2024, I caused to filed electronically the following: Amended Objection, thereby generating service by CM/ECF.

Executed on: January 23, 2024

/s/ Sarah J. Wencil
Sarah J. Wencil
Office of the United States Trustee